IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5342 of 2006
With
CIVIL APPLICATION No. 15164 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD. - Appellant(s)
Versus
PUSHPABEN SHANKARLAL BRAHMAN & 5 - Defendant(s)

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Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1,
MR JM BAROT for Defendant(s) : 1 – 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 13.07.2006 of the Motor Accident Claims Tribunal, Kutch at Bhuj in MACP No.664 of 1999 awarding compensation of Rs.6,47,000/- to the widow, minor child and parents of Shankarlal Brahman, who died at the age of 29 years in a motor vehicle accident involving a jeep insured by the appellant – insurance Company.

2. On 31.05.1999, the deceased, who was employed as a motor mechanic and driver of the tanker, was repairing the tanker at about 09:45 p.m. The jeep insured by the appellant – insurance Company being driven by respondent No.5 herein (original opponent No.1) dashed with the tanker and caused serious injuries to the deceased, who succumbed to them. The widow, minor son aged two years and parents of the deceased filed the claim petition for compensation of Rs.10 lacs.

3. The Tribunal had no difficulty in holding the jeep driver to be negligent. The deceased was repairing the tanker. The jeep driver lost control over the steering and the jeep was travelling at such excessive speed that it dashed with the stationary tanker and caused fatal injuries to the deceased, who was repairing the tanker.

4. On the question of quantum of compensation, the claimants led evidence to show that the deceased was working as a heavy vehicle driver and motor mechanic with the Efficient Engineering and Enterprise, Panandhro. He was getting monthly salary of Rs.5,800/- per month. The claimants had produced the income certificate at Exh.66. The certificate further stated that prior to employment with the said firm, the deceased was working with another firm called, M.V.K.Patel Company. The driving licence of the deceased was also produced at Exh.65 showing that

the deceased was a heavy motor vehicle driver. However, on the ground that the claimants had not examined the employer, the Tribunal did not accept the claimants' case and assessed the actual income of the deceased on the date of the accident at only Rs.3,000/- per month. The Tribunal did, however, consider the prospective future income of the deceased at Rs.4,500/- per month as per the usual standard formula. Deducting one-third therefrom as the personal expenses of the deceased, the Tribunal assessed the dependency benefit at Rs.3,000/- per month i.e. Rs.36,000/- per annum. As the deceased was aged 29 years, the Tribunal adopted the multiplier of 17 and computed the compensation for loss of dependency benefit at Rs.6,12,000/-. Adding thereto Rs.20,000/- for loss to the estate, Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses, the Tribunal made the award for total compensation of Rs.6,47,000/-. The Tribunal also awarded interest at the rate of 12% per annum for the

period from the date of the claim petition (15.07.1999) upto 31.12.2000 and therafter at the rate of 9% per annum.

5. Mr. Shalin Mehta, learned advocate for the insurance Company has submitted that the Tribunal has erred in adopting the higher multiplier of 17 years, when the deceased was 30 years.

6. In the facts and circumstances of the case, particularly, having regard to the fact that the deceased was shown to be having a heavy motor vehicle driving license and also in view of the undisputed fact that the deceased was repairing the tanker, when the accident in question took place on account of negligent driving of the jeep, would indicate that the deceased was also a mechanic. We are of the view that the assessment of the actual income of the deceased at Rs.3,000/- and prospective future income at Rs.4,500/- per month is on the lower

side and therefore, if the income of the deceased is assessed at a higher figure, in view of the income certificate at Exh.66, for doubting which, the Tribunal had no material on record, even on adopting the slightly lower multiplier of 15 years, there will be no reduction in the amount of compensation for loss of dependency benefit. The award under challenge is very much within brackets and therefore, we decline to admit this appeal.

7. The appeal is, therefore, summarily dismissed. Since the appeal is dismissed, stay application is also dismissed.

8. The amount deposited before this Court at the time of filing the appeal shall also be transmitted to the Tribunal within one month from today.

[M.S.SHAH,J.]

[AKIL KURESHI,J.]

mrpandya*